

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 762

Introduced by Senator Wolk

February 27, 2015

An act to add Article 3.7 (commencing with Section 20155) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. Counties: competitive bidding: best value: pilot program.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, ~~including~~, *including* the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow counties to select the lowest responsible bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. *The bill would establish procedures and criteria for the selection of a best value contractor.* The bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime. *The bill would require the board of supervisors of a participating county, before January 1, 2020, to submit a report to specified legislative committees.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.7 (commencing with Section 20155) is
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
3 Code, to read:

4
5 Article 3.7. Best Value Construction Contracting for Counties
6 Pilot Program
7

8 20155. (a) This article provides for a pilot program for counties
9 for construction projects in excess of one million dollars
10 (\$1,000,000).

11 (b) The board of supervisors of any county shall let any contract
12 for a construction project pursuant to this article to the lowest
13 responsible bidder or else reject all bids.

14 (c) The lowest responsible bidder may be selected on the basis
15 of the best value to a county. In order to implement this method
16 of selection, the board of supervisors shall adopt and publish
17 procedures and required criteria that ensure that all selections are
18 conducted in a fair and impartial manner. These procedures shall
19 conform to Sections 20155.2 and 20155.3 and shall be mandatory
20 for counties who choose to participate in the pilot program.

21 (d) If the board of supervisors deems it to be in the best interest
22 of the county, the board of supervisors, on the refusal or failure of
23 the successful bidder for a project to execute a tendered contract,
24 may award it to the second lowest responsible bidder. If the second
25 lowest responsible bidder fails or refuses to execute the contract,
26 the board of supervisors may likewise award it to the third lowest
27 responsible bidder.

28 20155.1. As used in this article:

29 (a) "Best value" means a procurement process whereby the
30 lowest responsible bidder may be selected on the basis of objective

1 criteria with the resulting selection representing the best
2 combination of price and qualifications.

3 (b) “Best value contract” means a contract entered into pursuant
4 to this article.

5 (c) “Best value contractor” means a properly licensed person,
6 firm, or corporation that submits a bid for, or is awarded, a best
7 value contract.

8 (d) “Demonstrated management competency” means the
9 experience, competency, capability, and capacity of the proposed
10 management staffing to complete projects of similar size, scope,
11 or complexity.

12 (e) “Financial condition” means the financial resources needed
13 to perform the contract. The criteria used to evaluate a bidder’s
14 financial condition shall include, at a minimum, capacity to obtain
15 all required payment bonds, performance bonds, and liability
16 insurance.

17 (f) “Labor compliance” means the ability to comply with, and
18 past performance with, contract and statutory requirements for the
19 payment of wages and qualifications of the workforce. The criteria
20 used to evaluate a bidder’s labor compliance shall include, as a
21 minimum, the bidder’s ability to comply with the apprenticeship
22 requirements of the California Apprenticeship Council and the
23 Department of Industrial Relations, its past conformance with
24 those requirements, and its past conformance with requirements
25 to pay prevailing wages on public works projects.

26 (g) “Qualifications” means the financial condition, relevant
27 experience, demonstrated management competency, labor
28 compliance, ~~the~~ and safety record of the bidder, and, if required
29 by the bidding documents, some or all of the preceding
30 qualifications as they pertain to subcontractors proposed to be used
31 by the bidder for designated portions of the work. *A county shall*
32 *evaluate financial condition, relevant experience, demonstrated*
33 *management competency, labor compliance, and safety record,*
34 *using, to the extent possible, quantifiable measurements.*

35 (h) “Relevant experience” means ~~the experience, competency,~~
36 ~~capability, and capacity to complete~~ *experience of the bidder with*
37 *projects of similar size, scope, or complexity.*

38 (i) “Safety record” means the prior history concerning the safe
39 performance of construction contracts. The criteria used to evaluate
40 a bidder’s safety record shall include, at a minimum, its experience

1 modification rate for the most recent three-year period, and its
2 average total recordable injury or illness rate and average lost work
3 rate for the most recent three-year period.

4 20155.2. A county shall proceed in accordance with the
5 following when awarding best value contracts under this article:

6 *(a) A county shall not select a lowest responsible bidder on the*
7 *basis of the best value to a county unless, after evaluating at a*
8 *public meeting the alternative of awarding the contract on the*
9 *basis of the lowest bid price, the county makes a written finding*
10 *that awarding the contract on the basis of best value, for the*
11 *specific project under consideration, will accomplish one or more*
12 *of the following objectives: reducing project costs, expediting the*
13 *completion of the project, or providing features not achievable*
14 *through awarding the contract on the basis of the lowest bid price.*

15 ~~(a)~~

16 *(b) A county shall prepare a solicitation for bids and give notice*
17 *pursuant to Section 20125. The county may identify specific types*
18 *of subcontractors that are required to be included in the bids. A*
19 *county shall comply with Chapter 4 (commencing with Section*
20 *4100) of Part 1 with regard to construction subcontractors*
21 *identified in the bid.*

22 ~~(b)~~

23 *(c) A county shall establish a procedure to prequalify bidders*
24 *pursuant to Section 20101. The information required pursuant to*
25 *this section shall be verified under oath by the bidder in the manner*
26 *in which civil pleadings in civil actions are verified. Information*
27 *submitted by the bidder as part of the evaluation process shall not*
28 *be open to public inspection to the extent that information is*
29 *exempt from disclosure under the California Public Records Act*
30 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
31 *Title 1 of the Government Code).*

32 ~~(c)~~

33 *(d) Each solicitation for bids shall do all of the following:*

34 *(1) Invite prequalified bidders to submit sealed bids in the*
35 *manner prescribed by this article.*

36 *(2) Include a section identifying and describing the following:*

37 *(A) Criteria that a county will consider in evaluating bids.*

38 *(B) The methodology and rating or weighting system that will*
39 *be used by a county in evaluating bids.*

1 (C) The relative importance or weight assigned to the criteria
2 identified in the request for bids.

3 ~~(d)~~

4 (e) Final evaluation of the best value contractor shall be done
5 in a manner that prevents cost or price information from being
6 revealed to the committee evaluating the qualifications of the
7 bidders prior to completion and announcement of that committee's
8 decision.

9 20155.3. Selection of the best value contractor shall be made
10 as follows:

11 (a) (1) An evaluation committee appointed by the county shall
12 evaluate the qualifications of the bidders based solely upon the
13 criteria set forth in the solicitation documents, and shall assign a
14 qualifications score to each bid.

15 (2) *A county shall establish written policies and procedures,*
16 *consistent with applicable law, to ensure that members of an*
17 *evaluation committee are free from conflicts of interest, if the*
18 *county has not already established applicable written policies and*
19 *procedures.*

20 (b) A county shall not award a contract for a construction project
21 pursuant to this article if a solicitation for bids for that construction
22 project results in the submission of fewer than three responsive
23 bids to the county for evaluation.

24 (c) The award of the contract shall be made to the bidder whose
25 bid is determined by a county, in writing, to be the best value to a
26 county. To determine the best value contractor, the county shall
27 divide each bidder's price by its qualifications score. The lowest
28 resulting cost per quality point will represent the best value bid.

29 (d) A county shall issue a written decision of its contract award.

30 (e) Upon issuance of a contract award, a county shall publicly
31 announce its award identifying the best value contractor to which
32 the award is made, the project, the project price, and the selected
33 best value contractor's score based on the evaluation criteria listed
34 in the request for bids. The notice of award shall be made public
35 and include the score of the selected best value contractor in
36 relation to all other responsive bidders and their respective prices.
37 The contract file shall include documentation sufficient to support
38 the decision to award.

39 20155.4. (a) Before January 1, 2020, the board of supervisors
40 of a participating county shall submit a report to the appropriate

1 policy committees of the Legislature and the Joint Legislative
2 Budget Committee. The report shall include, but is not limited to,
3 the following information:

4 (1) A description of the projects awarded using the best value
5 procedures.

6 (2) The contract award amounts.

7 (3) The best value contractors awarded the projects.

8 (4) A description of any written protests concerning any aspect
9 of the solicitation, bid, or award of the best value contracts,
10 including the resolution of the protests.

11 (5) A description of the prequalification process.

12 (6) The criteria used to evaluate the bids, including the weighting
13 of the criteria and an assessment of the effectiveness of the
14 methodology.

15 (7) If a project awarded under this article has been completed,
16 an assessment of the project performance, to include a summary
17 of any delays or cost increases.

18 (b) A report submitted pursuant to subdivision (a) shall be
19 submitted in compliance with Section 9795 of the Government
20 Code.

21 (c) This section shall remain in effect only until January 1, 2020,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2020, deletes or extends that date.

24 20155.5. Except as otherwise provided in this article, this article
25 is not intended to change in any manner any guideline, criteria,
26 procedure, or requirement of a county to let any contract for a
27 project to the lowest responsible bidder or else reject all bids.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.